

NASD REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Adelaide Oglesbee
Helen Tiedemann
Helen & Peter Ciolino

96-00340

Name of Respondents

Island Securities, Inc.
Frank Duca
John Lee
Jonathan E.S. Bekhor
Jan Joseph Jusko

REPRESENTATION

For Claimants Adelaide Oglesbee ("Oglesbee"), Helen Tiedemann ("Tiedemann"), and Helen and Peter Ciolino (the "Ciolinos") appeared Lawrence J. Bochat, Esq., of the law firm of Bochat & Keenan, P.C., located in Garden City, New York.

For Respondents Island Securities, Inc. ("Island"), John Lee ("Lee"), and Jonathan E.S. Bekhor ("Bekhor") appeared Jeffrey H. Weinberger, Esq., of the law firm of Winick & Rich, P.C., located in New York, New York.

For Respondent Jan Joseph Jusko ("Jusko") appeared John E. Lawlor, Esq., located in Garden City, New York.

Respondent Frank Duca ("Duca") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim was filed on January 22, 1996. Oglesbee's Submission Agreement was signed on January 18, 1996. Tiedemann's Submission Agreement was signed on January 17, 1996. The Ciolino's Submission Agreement was signed on January 20, 1996.

Joint Statement of Answer was filed by Island, Lee and Bekhor on July 23, 1996. Island did not file a Submission Agreement. Lee's Submission Agreement was signed on December 10, 1996. Bekhor did not file a Submission Agreement.

Statement of Answer was filed by Jusko on July 12, 1996. Jusko's Submission Agreement was signed on December 9, 1996.

Duca did not file a Statement of Answer or an executed Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences:	October 21, 1996	-	One Arbitrator
	October 30, 1996	-	One Arbitrator
Hearing Dates/Sessions:	December 9, 1996	-	Two Sessions
	December 10, 1996	-	Two Sessions
	January 20, 1996	-	One Session

The hearings were conducted at the offices of the National Association of Securities Dealers, Inc., located in New York, New York.

CASE SUMMARY

Claimants alleged that Oglesbee met Duca approximately twenty years ago when Duca maintained an investment desk at a local bank and that, through Duca, she invested approximately \$47,000.00 in two mutual funds. In addition, claimants alleged that, in February, 1995, Duca contacted Oglesbee and told her to take \$30,000.00 out of her mutual fund and put it into a very safe insurance company investment which would pay \$325.00 per month and which would return her principal amount in two years. Claimants asserted that, based upon the representations of Duca and Island, Oglesbee liquidated her mutual fund and gave Duca a check for \$30,000.00 payable to Allvest Corporation. Claimants further asserted that, shortly after Oglesbee gave the check to Duca, he sent her, in an envelope from Island, a promissory note signed "Allvest Corp."

Claimants alleged for a few months Oglesbee received personal checks from Duca in the amount of \$325.00 per month and that these checks were sent in envelopes from Island. Claimants also alleged that Oglesbee questioned Duca about the promissory note and the personal checks and that Duca told her not to worry because she knew him for twenty years and she should trust him. Claimants maintained that shortly thereafter she stopped receiving the checks.

Claimants alleged that Tiedemann also met Duca several years ago when he maintained an investment desk at a local bank. Claimants also alleged that, in 1991, Duca approached Tiedemann and informed her that he had a very good investment for her, a tax-free investment in old insurance companies which would bring her a little more in dividends. Claimants further alleged that, having dealt with Duca and Island for almost twenty years and having relied on their expertise, Tiedemann sold one of her mutual funds and invested \$30,679.00 in the investment Duca offered as Allvest. Claimants maintained that Duca provided Tiedemann with a promissory note for the amount of her investment. Claimants further maintained that, in June, 1994, Tiedemann withdrew \$5,000.00 from her investment and she received a new promissory note for \$25,679.00 with a 10% interest rate. Claimants alleged that Tiedemann received dividend checks of \$213.00 by postal money orders and company checks mailed to her by Duca

from Island and that, in September 1995, she stopped receiving checks.

Claimants alleged that the Ciolinos also met Duca when he maintained an investment desk at a local bank and that, in 1992, Duca contacted Mrs. Ciolino to advise her that he had a great deal which he described as a tax free bond backed by an insurance company paying 10% interest. Claimants further alleged that, at Duca's direction, Mrs. Ciolino liquidated her mutual fund account in the amount of \$40,000.00 and gave this money to Duca. In return, according to the claimants, Duca gave Mrs. Ciolino a promissory note for \$40,000.00. Claimants also contended that, at Duca's direction, Mrs. Ciolino withdrew an additional \$20,000.00 from her mutual fund account and gave this money to Duca, who provided the Ciolinos with another promissory note for the sum of \$20,000.00.

Claimants contended that, after the first year, Mrs. Ciolino received two personal money orders from Duca for \$2,000.00 and that the following year Duca sent her two checks for \$500.00. Claimants further contended that, after numerous telephone calls, Duca sent the full \$4,000.00 as was agreed. Claimants maintained that, in July, 1994, when the \$40,000.00 note came due, Mrs. Ciolino contacted Duca at Island to withdraw the \$40,000.00. Claimants alleged that Mrs. Ciolino confronted Duca in his Island office and that Duca claimed that neither he nor Island could pay the note because Allvest went bankrupt.

Respondents Island, Bekhor, and Lee denied all allegations of wrongdoing in the Statement of Claim. As affirmative defenses, respondents Island, Bekhor, and Lee maintained that neither Bekhor nor Lee were affiliated with Island in any way at the time of the events underlying claimants' claims; that the actions alleged by claimants were all committed by respondents Duca and/or Jusko in their capacities as principals and officers of Allvest, and/or other legal entities with the word Allvest for their names and that those actions had nothing whatsoever to do with Island, per se; that neither Bekhor nor Lee ever met any of the claimants at the time of the transactions forming the basis of their respective claims.

In addition, Island, Bekhor and Lee asserted a cross-claim against Duca and Jusko for indemnification and reimbursement for their costs and attorneys fees.

Respondent Jusko maintained that the claimants' investments did not involve the purchase or sale of any security under the auspices or sponsorship of Island. Instead, Jusko contended that the investments were private personal loans made directly by claimants to Duca and made payable to Allvest, not Island. Jusko further contended that he was not Duca's supervisor and, moreover, that the personal transactions alleged in the Statement of Claim were outside the realm of any securities transaction for which Jusko could have had any supervisory responsibility. In addition, Jusko contended that the claimants never discussed their private investments with him, did not seek his counsel with respect to these transactions and, did not complain to him until this claim was filed.

RELIEF REQUESTED

Claimants requested judgment against respondents jointly and severally as follows: (i) concerning Oglesbee's claim, damages in excess of \$30,000.00; (ii) concerning Tiedemann's claim, damages in excess of \$25,679.00; (iii) concerning the Ciolinos' claim, damages in excess of \$60,000.00;

(iv) recovery of interest that would have been attained in a well managed account; (v) costs and disbursements; and (vi) such other and further relief as the arbitrators may deem just and proper.

Respondents Island, Bekhor and Lee in their cross-claim requested indemnification from respondents Duca and Jusko. In addition, these respondents requested reimbursement from Jusko and Duca, jointly and severally, for their costs and attorneys fees.

Respondent Jusko requested that the panel dismiss the Statement of Claim, assess all costs against the claimants, together with such other and further relief deemed appropriate.

OTHER ISSUES CONSIDERED & DECIDED

The panel made the following rulings as to respondent Island who failed to file an executed Submission Agreement in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Island was a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over Island pursuant to Rule 10301(a) of the Code.
3. The panel found that Island was required to file an executed Submission Agreement pursuant to Rule 10314(b) of the Code.

In January, 1997, claimants requested that the panel dismiss all claims against respondent Bekhor without prejudice. The panel granted this request.

The panel has determined that respondent Duca was not provided with "due notice" of the hearings in this matter. The panel, therefore, dismissed the claims against respondent Duca without prejudice.

The parties have agreed that the award in this matter may be executed in counterpart copies or that a handwritten, signed award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims against respondent Lee be and hereby are dismissed in their entirety.
2. Respondents Island and Jusko be and hereby are jointly and severally liable and shall pay Oglesbee the sum of \$30,000.00 plus interest at the rate of 9% per annum from August 15, 1995 until the date of payment.

3. Respondents Island and Jusko be and hereby are jointly and severally liable and shall pay Tiedemann the sum of \$25,679.00 plus interest at the rate of 9% per annum from July 17, 1995 until the date of payment.
4. Respondents Island and Jusko be and hereby are jointly and severally liable and shall pay the Ciolinos the sum of \$60,000.00 plus interest on \$40,000.00 at the rate of 9% per annum from July 14, 1994 until the date of payment and interest on \$20,000.00 at the rate of 9% per annum from April 8, 1995 until the date of payment.
5. Pursuant to the promissory notes submitted as Exhibits 9, 11, and 13, respondents Island and Jusko be and hereby are jointly and severally liable and shall pay claimants the sum of \$12,000.00, representing reasonable attorneys fees.
6. Respondents Island and Jusko be and hereby are jointly and severally liable and shall pay claimants the sum of \$950.00 to reimburse claimants for the fees previously paid to the NASD.
7. Pursuant to Rule 10305 of the Code, the cross-claims of respondents Island, Lee and Bekhor are hereby dismissed without prejudice and the parties are referred to the remedies provided by applicable law.
8. All other claims are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) (formerly known as Section 43(c)) of the Code of Arbitration Procedure, the arbitrators have assessed the following forum fees:

filing fee	= \$ 200.00
2 pre-hearing conferences x \$300.00	= \$ 600.00
5 hearing sessions x \$750.00	= <u>\$3,750.00</u>
Total forum fees	= \$4,550.00

Respondents Island and Jusko be and hereby are jointly and severally liable for the sum of \$4,550.00, representing the total amount of the forum fees assessed. Claimants previously paid \$950.00 with the NASD. Therefore, respondents Island and Jusko shall pay the NASD the sum of \$3,600.00, representing the total outstanding forum fees.

Fees are payable to the NASD Regulation, Inc.

Arbitrators' Signatures

Marilyn J. Salzman

Marilyn J. Salzman, Esq.
Chairperson-Public Arbitrator

Paul J. Contillo
Public Arbitrator

Clifford J. Friedman
Industry Arbitrator

Date of decision: March 5, 1997

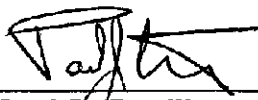
I, Marilyn J. Salzman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Marilyn J. Salzman

Marilyn J. Salzman, Esq.

Arbitrators' Signatures

Marilyn J. Salzman, Esq.
Chairperson-Public Arbitrator

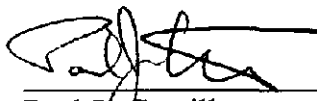


Paul J. Contillo
Public Arbitrator

Clifford J. Friedman
Industry Arbitrator

Date of decision: March 5, 1997

I, **Paul J. Contillo**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

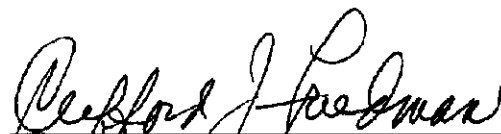


Paul J. Contillo

Arbitrators' Decision

Marilyn J. Salzman, Esq.
Chairperson-Public Arbitrator

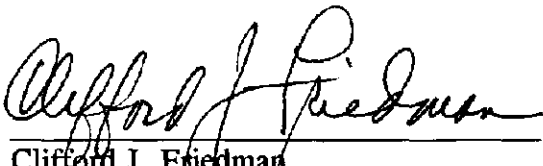
Paul J. Contillo
Public Arbitrator



Clifford J. Friedman
Industry Arbitrator

Date of decision: March 5, 1997

I, **Clifford J. Friedman**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Clifford J. Friedman